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Attorneys for Plaintiff  
 United States of America

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 07CR2984-BTM
	)	
Plaintiff,	)	Date: February 15, 2008
	)	Time: 2:30 p.m.
v.	)	
	)	GOVERNMENT'S RESPONSE AND
FELIX MOJICA-PERALTA,	)	OPPOSITION TO DEFENDANT'S
	)	MOTIONS TO:
Defendant.	)	(1) COMPEL DISCOVERY
	)	
	)	
	)	(2) GRANT LEAVE TO FILE FURTHER
	)	MOTIONS
	)	
	)	TOGETHER WITH MEMORANDUM OF
	)	POINTS AND AUTHORITIES AND
	)	STATEMENT OF FACTS

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and ALESSANDRA P. SERANO, Assistant United States Attorney, hereby files its response and opposition to Defendant's above-referenced motions. This response is based upon the files and records of this case, together with memorandum of points and authorities.

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**I****STATEMENT OF FACTS**

On October 2, 2007, Border Patrol Agent Quillin was patrolling the area of Rattlesnake Ridge south of Old Highway 80, approximately 20 miles east of the Tecate Port of Entry and approximately 2 miles north of the international border. This area is commonly used by illegal aliens to further their entry into the United States. At approximately 8:00 a.m., Agent Quillin responded to a seismic intrusion device where he observed fresh footprints for a group of people. He followed the prints when he encountered a group of six people, one of whom was the Defendant, Felix Mojica-Peralta.

Agent Quillin questioned each person about their citizenship and immigration status. Each person, including the Defendant, stated that they were Mexican citizens with no documents allowing them to enter the United States. All individuals were transported to the Campo Border Patrol Station for further processing.

All six individuals were processed at the station. Record checks revealed that Defendant had a criminal history including a conviction for PC §261, Rape, from Fresno, California. Agents were processing many people and did not review Defendant's records until that afternoon. At approximately 3:20 p.m. that same day, Agent Plasencia along with Agent Lopez advised Defendant that his administrative rights no longer applied and read Defendant his Miranda rights. Defendant acknowledged his Miranda rights and agreed to make a statement. He said that he was a Mexican citizen who knowingly entered the United States illegally by climbing over the boundary fence earlier that morning. He stated he was enroute to Fresno, California. He admitted he had no documents to enter the United States. He admitted that his criminal and immigration history was in fact his. The interview was electronically recorded.

**II****POINTS AND AUTHORITIES****A. Discovery Should Not Be Compelled**

The Defendant's prior counsel has previously filed this exact motion and it was denied by the Court.

1 To date, the Government has delivered 55 pages of discovery and 1 DVD. The Government  
2 recognizes and acknowledges its obligation pursuant to Brady v. Maryland, 373 U.S. 83 (1963), the  
3 Jencks Act, and Rules 12 and 16 of the Federal Rules of Criminal Procedure. The Government has  
4 complied and will continue to comply with its discovery obligations going forward. To date, the  
5 Government has received no reciprocal discovery.

6 As to exculpatory information, the United States is aware of its obligations under Brady v.  
7 Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972) and will comply. The  
8 United States will also produce any evidence of bias/motive, impeachment or criminal investigation of  
9 any of its witnesses of which it becomes aware. An inquiry pursuant to United States v. Henthorn, 931  
10 F.2d 29 (9th Cir. 1991) will also be conducted.

11 The United States will provide a list of witnesses in its trial memorandum. The grand jury  
12 transcript of any person who will testify at trial will also be produced.

13 The United States has provided information within its possession or control pertaining to the  
14 prior criminal history of Defendant. If the Government intends to offer any evidence under Rule 404(b)  
15 of the Federal Rules of Evidence, it will provide notice promptly to the Defendant.

16 The United States will produce any reports of experts that it intends to use in its case-in-chief  
17 at trial or such reports as may be material to the preparation of the defense. The Government also  
18 invited defense counsel to make an appointment with Government counsel to view the A file if he so  
19 chooses.

20 In view of the above-stated position of the United States concerning discovery, it is respectfully  
21 requested that no orders compelling specific discovery by the United States be made at this time.  
22 Further, the Government requests that defense counsel specify what discovery he is lacking, if any.

23 **B. Leave to File Further Motions**

24 The Government does not oppose Defendant's request to file further motions if based on newly  
25 produced discovery. Give the fact that no new discovery has been produced because there is no new  
26 discovery, the motion should be denied.

III

CONCLUSION

For the foregoing reasons, the Government respectfully requests that Defendant's motions be denied.

DATED: February 7, 2008

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

/s/ Alessandra P. Serano

ALESSANDRA P. SERANO  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
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v. )  
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FELIX MOJICA-PERALTA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 07CR2984-BTM

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, ALESSANDRA P. SERANO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Government's Response and Opposition to Defendant's Motions to Compel Discovery and Grant Leave to File Further Motions and the Government's Motions for Reciprocal Discovery and Fingerprint Exemplars, on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Christian de Olivas, Esq.

Email: christian@deolivaslaw.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 7, 2008

s/Alessandra P. Serano  
ALESSANDRA P. SERANO